

STUDY COMMISSION MEETING
DECEMBER 9, 2004 – 5:30 PM

Chairman, Bob Worley brought the meeting to order at 5:30 PM., in the Public Works Conference Room, First Floor, of the Courthouse.

Mr. Worley proceeded to call roll with the following results:

MEMBERS PRESENT:

Bob Worley, Meg Sharp, Ristene Hall, Cindi Shaw, Tony Bonney, and Dave Palmer

EXCUSED ABSENCE:

Shag Miller and Wayne Harper.

UNEXCUSED ABSENCE:

Northy Tretheway

OTHERS PRESENT:

Bob McCarthy and Dinah McLeod.

Bob Worley stated that before this meeting gets started he would like to say that he is just one person of nine that were elected to this. I expect everybody to be involved in this. He would ask that everybody be involved. I am not here to rule anything and He wants everyone to feel comfortable in this room and if you have something come up, I would you to bring that forward. Dave and I have visited a little bit. There are rules and order of business that the Council of Commissioners use and we have gone through them and we are going to shorten them somewhat for our Committee because there are a lot of things that they do in the Commissioners Chambers that won't really pertain to what we do. So hopefully before we get our next meeting going, I will have a reduced copy of this thing so everybody will kind of know the procedure we will be following. I would like to have anybody that comes onto the floor or asking questions to address the Chair for permission to speak. If you speak one time on a particular item, everybody else on the floor will be entitled to speak before you can speak again. This is the procedure we will follow. Are there any questions?

Tony Bonney:

Bob, members not on the Committee, I know they are open to the public. But if somebody came up and decided they wanted to speak, is there a procedure that they have to go to to be able to speak?

Bob Worley:

There is and we will address that in the rules and order of business. Also we will have a sign in sheet for anyone who wants to speak to us as a group and there is a sheet where they can submit written comments if they don't want to speak.

Item #1 – Finalize Plans of Training Session at Local Government Center at MSU In Bozeman, MT on December 16 & 17, 2004:

Bob advised the Committee that Dinah has all of that information.

Dinah McLeod:

I have already sent in the registration fee and everyone should have received notices back from the MSU Center. It was all sent in under one check. We had to split up rooms between the GranTree and Holiday because of course everybody in the state is going. I will get confirmations and I'll call you to let you know exactly where you will be going. I will call you probably on Monday. These hotels are side by side, so it doesn't matter.

Bob asked how many from this Committee are attending this training session. Dinah replied everyone but Shag Miller and she will also be attending.

Cindi and Meg need a ride. Bob Worley stated that they will get together and make sure everyone has a ride.

Item #2 – Study Commission – Budget Amount:

Bob Worley reported that he had visited with the Budget Office upstairs and we are budgeted for \$20,000 for the first six months on the Study Commission. So I imagine the Budget Office will keep track of how much we are spending. If Dinah or I check with them on a monthly basis, we will kind of have an idea of what the balance is.

Dinah:

Every month they print out – and Bob knows they print out your budget of what you have used and what you have left, so we can get a printout.

Bob McCarthy:

At some point, probably in March, you will have to submit a preliminary budget for next year. So you will spend more money next year. I don't know how much they spent the last time, but you can see what they spent and factor in some inflationary costs. But you will spend more money this coming year than now.

Bob Worley:

So, can you and I get together on that?

Bob McCarthy:

Sure. The budget year is a fiscal year and ends June 30th and starts July 1, 2005 and ends June 30, 2006.

Item #3 – Review BSB Government Organizational Chart, Previous Study Commission Pamphlets from 1984-86 and 1994-96:

Bob Worley:

I had a chance to read through these. I thought that we have a lot of information in there. But I thought that a lot, especially job descriptions were repetitious in this. But I am sure that there are some questions, so why don't I just open it up to the floor. I can't see spending a lot of time, unless we have to refer back to the previous charters from 1996 and 1986. So why don't we just take a look at reviewing the last charter done, which was in 1996.

Tony Bonney:

I have a question before we get started on the review part. At the last meeting Bob McCarthy gave us, was speaking to us about actual duties of the chief executive and their inability to let people go, to change department heads. I had a chance to do some research and had a friend of mine, who is an attorney, do some research with me. We found three Supreme Court cases from the State of Montana that specifically addressed this, at the pleasure of, which is the statement that reads in the chief executive's. The act, the pleasure of, is exempt from the wrongful discharge act. So my question would be, if we get into a spot like this and we actually have an

area that we feel we need a decision on, is there – as members can we request an Attorney General’s opinion on any of this stuff?

Bob McCarthy:

I don’t think so. Members of the Legislature, the chief executive officer or a member of a governing body of a city or county can do that. I don’t think you qualify.

Tony Bonney:

What we are going to be doing is reviewing these things and it is my understanding we are not stepping in to fire anybody and that is not the reason why I am doing this. But as we get into this, there may come up questions that affect this and I feel we should be able to request an Attorney General’s opinion on some of this stuff so that when we present the subject matter to the people that elected us to this committee we actually have something to back us up.

Bob McCarthy:

Let me tell you something. An Attorney General’s opinion typically takes about six-months, sometimes we have had them take as long as a year and a half. Just to repeat what I said earlier. I don’t think you are an eligible entity to get it. The Attorney General’s opinions are issued for the purpose of interpreting law, they are not issued for the purpose of giving advice.

Tony Bonney:

We are not going to give advice to the community. Exactly, maybe we can find out in Bozeman. Even if we get a letter from the Attorney General that says no you are not eligible for this. Is there a way that as a member I can request to see if we are eligible under this group.

Bob McCarthy:

I think your answer is going to be you are supposed to hire a lawyer. If you need legal advice that is what you are supposed to do. The Attorney General I am just guessing, is not going to be a legal advisor to every local government study commission. There are 120 cities and 56 counties.

Bob Worley:

This is referring to and I have read through this, marked it in the Charter also, Section 4.02000 – Duties and powers of the chief executive, and if you

go over to 13d in the book it says, “The Chief Executive shall appoint, with the advice and consent of the Council of Commissioners, all non-elected department heads who shall serve at the pleasure of the Chief Executive”. And that is what you are talking about.

Tony Bonney:

Yes and I pulled this up out of a law library, that we reviewed and found three cases from the Supreme Court that ruled in favor of the at pleasure of. It is not at will. It is at the pleasure of and it is totally different and it is exempt from the wrongful discharge act.

Bob Worley:

So I guess the rest of that, if you read the rest of that article says, “ The Chief Executive shall have to power to hire and fire all other employees of local government with the exception of those employees hired by other elected officers and those who have gained tenure as defined by statute of ordinance”. So I guess what we have to know is how they have gained tenure or how tenure is defined by the statute of ordinance.

Tony Bonney:

Exactly and that is what I was referring to. If we’re going to go through each and every one of these, which I am sure we will, in each and every department to make our suggestions. If we get to something like this and we make a suggestion that yes you can. I mean there’s got to be something out there that we can back up and if the procedure is we have to hire an attorney then I don’t know if that is something the whole Committee would take a vote on. I don’t know how you would determine an attorney or anything like that. But I am thinking that when we get down to stuff like that we had better be able to back it up with some proof.

Bob Worley:

This is detailed. This looks like it might be something we have to look at and change. I don’t want to rush anybody and move through this thing quick, but I think we want to cover these things on an individual basis. Probably a lot of places in here we won’t want to do any changing whatsoever.

Bob McCarthy:

One thing to keep in mind, is that when a charter amendments are adopted they are a difficult change. It is hard to get things changed because for one

thing it normally only happens every ten years and it has to go to the vote of the people. It is difficult to get these things by vote. That is the reason that you have a governing body and chief executive, so that you can change.

Bob Worley:

In this case, I think what we want to do is make sure the wording in this corresponds with state law.

Bob McCarthy:

Right. I think what you want to do is you want to do it with the recognition that state law isn't static. In two years, five years it can change. From experience we know that it can. So what I am getting at is that whatever you are going to do provide a basic structure and not get into such detail that you will make the document obsolete or contrary to the law, which has happened.

Bob Worley:

We don't need any more lawsuits.

Tony Bonney:

That is part of the reason why I asked that question is that obviously Bob has a different opinion than the court cases that I looked at. But we have got to get an opinion from someone and see if the Attorney General can. I don't know if we can or we can't. In order for us to present this to someone we better have something to back us up and say yes we had an opinion on this or we had xyz law firm check this out or whatever we have to do. But my question is was to do that. When we come to a part like this, what do we do to get it defined? Difference of opinions always happen or how you read something or how you don't read it is always different. But when you get an actual statement saying this is what the state law is or this is what the resolution reads or the ordinance or whatever, this is where you base your facts on.

It was suggested that a survey be sent to department heads asking if they could change anything what would it be. Bob McCarthy stated there is no reason why that couldn't be done. It was then suggested that a survey be sent to all employees. It was decided that each member would come back to the next meeting with several questions to put on this questionnaire to be sent to Butte-Silver Bow employees.

It was also suggested that a letter be sent now to Chief Executive Jacobson and Budget Director, Mike Shea to invite them to the January 6th meeting and give them a time of approximately 45 minutes..

Item #4 – Butte-Silver Bow – Linda Sajor Joyce:

www.co.silverbow.mt.us is the web site, which Linda Sajor Joyce set up. It is currently down. The minutes from each meeting will also be on this web site as well as all of the members.

A motion was made and seconded to post minutes from each meeting on the Butte-Silver Bow Web site.

The next meeting will be held on January 6, 2005.

Respectfully submitted,

Linda Raiha

Secretary